

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KELLY REGER, Individually and on)	Case No. _____
behalf of K.N.R., a Minor,)	
)	
Plaintiff,)	
)	COMPLAINT, DEMAND FOR JURY
vs.)	TRIAL AND PRAECIPE
)	
HERBERT FEIDLER, M.D., d/b/a)	
FEIDLER EYE CLINIC & OPTICAL,)	
)	
Defendant.)	

The following allegations apply to all counts:

1. Parties:
 - a. Plaintiff Kelly Reger is a resident of Staten Island, Richmond County, New York, and is the father of K.N.R., a minor;
 - b. K.N.R., date of birth November 17, 2005, is the minor child of Kelly Reger, and a resident of Staten Island, Richmond County, New York;
 - c. Defendant Herbert Feidler, M.D., is licensed to practice medicine and specializes in ophthalmology, is a resident of Norfolk, Madison County, Nebraska, and licensed to practice medicine in the State of Nebraska; Feidler at all times hereafter mentioned was doing business as Feidler Eye Clinic & Optical and was practicing medicine in Norfolk, Nebraska.
2. Jurisdiction:
 - a. This court has jurisdiction under the provisions of 28 U.S. Code, Section 1332 (1) because the plaintiff and the defendant are

residents of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

3. The conduct hereinafter set forth occurred in Madison County, Nebraska.

4. On March 25, 2008, the plaintiff took K.N.R. for an ophthalmological exam to the defendant and she was diagnosed with accommodative esotropia. Thereafter, K.N.R. was seen by the defendant on May 6, 2008; June 20, 2008; August 5, 2008; and August 12, 2008. The diagnosis remained accommodative esotropia with a prescription of Atropine.

5. The plaintiff and K.N.R. moved to the State of New York after August of 2008. It was immediately determined that K.N.R. had not been diagnosed or treated in accordance with the reasonable standards of a physician of ophthalmology.

6. The defendant fell below the reasonable standard of care for the treatment of K.N.R.

7. The plaintiffs elect to waive filing this case with a medical review panel pursuant to Neb.Rev.Stat. § 44-2840(4). Plaintiff has concurrently filed a copy of this complaint with the Director of the Nebraska Department of Insurance.

8. That section of the Nebraska Hospital-Medical Liability Act that provides a limit on damages, Neb.Rev.Stat. § 44-2825, is unconstitutional as in violation of the Due Process Clause of Amendment 14, U.S. Constitution, and Article 1, Sec 3, Nebraska Constitution.

COUNT I

CLAIM OF K.N.R., a MINOR

9. As a result of the negligence of the defendant, K.N.R. is blind in both eyes.

10. Plaintiff above incurred the following damages:

- a. Medical expenses, past and future;
- b. Permanent disability;
- c. Loss of earning capacity; and
- d. Pain, suffering, and mental anguish, past and future.

WHEREFORE, plaintiff Kelly Reger prays for judgment against the defendant in the amount of \$5,000,000.00 on behalf of K.N.R., including costs and interest; that the liability portion of the trial be bifurcated; and that Neb.Rev.Stat. § 44-2825 be declared unconstitutional.

COUNT II

CLAIM of KELLY REGER

11. As a proximate result of the defendant's negligence, plaintiff Kelly Reger has incurred damages as follows:

- a. Medical expenses, past and future for K.N.R.;
- b. Costs of providing educational, vocational, and other special assistance for K.N.R.;
- c. Loss of income; and
- d. Mental anguish, past and future.

WHEREFORE, plaintiff Kelly Reger prays for judgment against the defendant in the amount of \$1,000,000.00, including costs and interest; that the liability portion of the trial be bifurcated; and that Neb.Rev.Stat. § 44-2825 be declared unconstitutional.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial in the United States District Court for the District of Nebraska, located in Lincoln, Nebraska.

Dated this 27th day of May, 2010.

KELLY REGER, Individually and on
behalf of K.N.R., a Minor, Plaintiff

BY: FRIEDMAN LAW OFFICES
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And

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/s/ Herbert J. Friedman

Herbert J. Friedman #11390

PRAECIPE FOR ISSUANCE OF SUMMONS

TO: Clerk of the United States District Court:

Please issue Summons, endorsed according to law, for service upon the following named Defendants. Service will be by Certified Mail.

Herbert Feidler, M.D.
Feidler Eye Clinic & Optical
2800 W Norfolk Avenue
Norfolk, NE 68701

/s/ Herbert J. Friedman
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a duplicate original copy of this Complaint and Praecipe was served upon the Director of the Nebraska Department of Insurance and the Nebraska Attorney General by certified mail, return receipt requested on this 27th day of May, 2010.

/s/ Herbert J. Friedman
Attorney for Plaintiff